

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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SMITH KLINE & FRENCH LABORATORIES, LTD, AND SMITHKLINE BEECHAM CORP., d/b/a GLAXOSMITHKLINE,	:	
Plaintiffs,	:	Civil Action No. 05-197 GMS
v.	:	
TEVA PHARMACEUTICALS USA, INC.,	:	
Defendant.	:	

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**DEFENDANT TEVA PHARMACEUTICALS' MOTION FOR LEAVE TO AMEND ITS  
ANSWER, DEFENSES, AND COUNTERCLAIMS**

Defendant Teva Pharmaceuticals U.S.A., Inc. ("Teva") moves, pursuant to Federal Rule of Civil Procedure 15(a), for leave to amend its Answer, Defenses, and Counterclaims to add affirmative defenses and declaratory judgment counterclaims stemming from Plaintiffs' inequitable conduct in obtaining U.S. Patent Nos. 4,452,808 and 4,824,860, which Plaintiffs allege Teva has infringed. As discussed in detail in the accompanying memorandum (filed under seal), this Court should permit Teva to amend its answer to add these defenses and counterclaims even though the deadline for amending pleadings set in the Court's original Scheduling Order has elapsed. Teva only recently discovered the evidence needed to plead these allegations with particularity as required under the Federal Rules. Moreover, Teva's addition of these defenses and counterclaims is not brought for an improper purpose and would not be futile. Nor would Teva's amendment of its answer unduly prejudice Plaintiffs, and Teva does not believe that the proposed amendment should affect the Court's previously scheduled trial date.

Prior to filing this motion, Teva made reasonable efforts to seek Plaintiffs' agreement not to oppose Teva's filing of its amended answer, including by sending a copy of Teva's proposed amended answer to opposing counsel by letter dated June 21, 2006. On June 23, 2006, Teva was informed that Plaintiffs would oppose Teva's efforts to amend its answer. Accordingly, Teva files the instant motion seeking leave from the Court to file its amended answer with the expectation that Plaintiffs will oppose Teva's motion.

Respectfully submitted,



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Dated: June 28, 2006

**CERTIFICATE OF SERVICE**

I, Monté T. Squire, Esquire, hereby certify that on June 28, 2006, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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I further certify that on June 28, 2006, I caused a copy of the foregoing document to be served by hand delivery on the above-listed counsel of record and the following non-registered participant in the manner indicated:

**BY E-MAIL AND FEDERAL EXPRESS**

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